

RESPONSE

Claims 1, 2, 6, 10-13, 19, 21 and 22 are presently pending in the subject application. In view of the foregoing amendment, claim 10 is canceled, claim 1 is amended and new claims 23 & 24 are added to more clearly define the invention. Applicant respectfully contends that no issue of new matter is presented by the foregoing amendment.

I. **35 U.S.C. 112 Rejection**

Claims 1, 2, 6, 9-13, 19, 21 and 22 are rejected under 35 U.S.C. 112, 2nd paragraph as indefinite.

In response to the rejection on the basis of the recitation "said means" purportedly lacking antecedent basis, the Applicant traverses this rejection inasmuch as claim 1 requires at line 9 "means for providing access into the interior of the pocket."

In response to the rejection on the basis of the recitation "a plurality of panels, at least of said plurality of panels," said recitation is amended to recite "a plurality of panels, at least one of said plurality of panels."

In response to the rejection on the basis of the recitation "said back surface being perforated with vents disposed above a part of said back surface" said recitation is amended to recite "said back surface being perforated with vents disposed at said back surface."

Since the foregoing amendments are believed to make the limitations definite to one of ordinary skill in the art, withdrawal of the rejection is respectfully requested.

II.
35 U.S.C. 102 Rejection

Claims 1, 2, 6, 10-12, 19 & 21 are rejected under 35 U.S.C. 102(b) as anticipated by U.S. Patent No. 2,821,295 to *Marks*, or in the alternative, over *Marks* in view of either U.S. Patent No. 2,606,636 to Braverman or U.S. Patent No. 2,774,450 to Smallberg.

Applicant respectfully traverses this rejection in contending the claims are clearly patentably distinct over the teachings of mark, either alone or in combination with Braverman or Smallberg.

A. Scope of the Rejected Claims

Notwithstanding the fact that Applicant believes the claims were patentably distinct over the prior art prior to the submission of the aforementioned amendment, independent claim 1 is now amended to more clearly define the invention over the prior art cited by the Examiner, namely, *Marks*.

As presently recited, claim 1 is directed to a garment container which includes, *inter alia*, (1) at least one self-contained (i.e., pre-fabricated) closeable pocket composed of a transparent gas impermeable material for closing a cut-out opening of a vertical side panel of the container, and (2) means for providing access into the interior of the pocket, the means being provided adjacent to and along a top edge of the self-contained closeable pocket.

B. Marks, Braverman & Smallberg Lack a Self-Contained Pocket

One aspect of the invention relates to the self-containing nature of the pocket that facilitates the attachment of the pocket to any particular surface area of a storage container. In particular, the term "self-containing" in the limitation "self-containing closeable container" is used here to mean one that is "independent" in nature. Thus, the pocket of the invention is "independent" or a pre-fabricated prior to being

attached to the container. This meaning is supported at least on page 4, lines 6-7 of the Specification section of the instant application, which states:

"In making the pocket of the present invention, the zipper is sewn into the outside nonperforated piece of polyethylene of the pocket and then such nonperforated front piece is sewn to the perforated piece which is exposed to the interior of the bag when the pocket is in place and covers the cut-out portion of the garment bag. The resulting pocket is then sewn into an opening cut out from any of the gas impermeable surfaces of the garment bag." (emphasis added)

Thus, the independent nature of the self-contained closeable pocket of the claimed invention would permit filling of the pocket with chemical compositions such as moth balls prior to attachment to the container.

Moreover, the pocket of the invention is adapted for attachment to any side, front and rear panel, or top and bottom panel of a container by a suitable fastener. This is also important since the self-containing pocket can be installed in a cut-out opening in any specific area of the garment container in response to the type of chemical composition used to protect the garments. These advantages are recited in the specification of the instant application. As noted on pg. 4, lines 8-20 of the Specification:

"It is believed that placement at the top permits greater dissemination of the chemicals vapors which have the characteristic of gravitating to the bottom so as to provide a greater degree of protection for the garments. For those chemicals which vaporize and which rise upwardly from the perforations the pocket is preferably situated towards a lower section of the container."

On the other hand, *Marks* discloses a compartment 21 that is formed only by its attachment to an opening 16 of a garment bag 11, and thus, is not independent in the meaning provided in the claimed invention, i.e., as shown by the fact that the compartment 21 does not exist until it is attached to the bag. As illustrated in Fig. 3 of *Marks*, and admitted at least on Col. 1, lines 53-55, in which is stated:

"This opening is closed by a supplemental front wall 17, which constitutes one wall part of a compartment forming strip or sheet 18, shown, in part in perspective, in Fig. 3 of the drawings. This strip or sheet is formed of plastic or other transparent material, the sheet being folded, as indicated at 19, to form a front window wall portion 20 of a resulting compartment 21 to be formed at the opening 16." (emphasis added)

Thus, all side edges of the sheet that forms compartment 21 are not closed or sealed until the sheet is folded and attached to the bag. This would not permit the filling of the folded sheet material with chemical compositions such as moth balls prior to attachment since both side edges are exposed. See, Fig 3. As expressly provided in the teachings of *Marks*, the compartment 21 comes into being upon its formation at the opening 16 of the garment bag 11. Accordingly, one having ordinary skill in the art cannot infer from the explicit teachings of *Marks* that the compartment 21 is "self-containing" or "pre-fabricated" as defined in the pending claims 1 of the present invention.

In view of the foregoing, the present invention as currently defined in amended claim 1, is not anticipated by *Marks*. Careful reconsideration and withdrawal of the rejection of claims 1, 2, 6, 9-12, 19 and 21 is respectfully requested.

C. Marks Lacks the Specified Spatial Location of the Means for Providing Access

Yet another aspect of the invention as presently claimed in amended claim 1 is the provision of a means for providing access into the interior of the pocket, the means for providing access being arranged adjacent to and along a top edge of the pocket.

The Office Action appears to suggest in *Marks* that "the zipper 23 is along the top edge as claimed, i.e., it is parallel to the top edge."

However, *Marks* discloses a garment bag comprising a compartment 21 installed in the upper front wall of a bag (Col. 1, lines 17-19) and a first zipper 23 for providing access into the interior of the

compartment 21, the first zipper 23 being arranged along a middle portion of the compartment 21. See Figs. 1 and 2 of *Marks*. Because the zipper 23 is located at a middle portion of the pocket, the entire pocket cannot be filled to its maximum capacity like the pocket of the claimed invention, thereby requiring any moth balls or crystals to be replaced at a greater frequency.

Most importantly, there is no mention in the claims or specification of the subject application of the limitation "along the top edge" being defined as "parallel to the top edge" as the Office Action erroneously suggests. The Examiner cannot proceed *sua sponte* and define what the invention is when a definition is clearly provided in the body of the specification. This is in accord with the well-established axiom that the applicant being his own lexicographer.

As the Examiner well knows, the M.P.E.P. and the courts have provided canons of construction concerning proper claim interpretation. For example, during the patent examination process, pending claims should be given the broadest reasonable interpretation consistent with the specification. *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997); *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969). See also MPEP § 2111.01. It is further recognized that claim terms should be given their ordinary meaning to those skilled in the art, unless the specification or file wrapper clearly articulates that a different meaning is appropriate. *York Prods., v. Central Tractor Farm & Family Ctr.*, 99 F.3d 1568, 1572 (Fed. Cir. 1996). When the specification states the meaning that a term in the claim is intended to have, the claim is examined using that meaning, in order to achieve a complete exploration of the applicant's invention and its relation to the prior art. *In re Zletz*, 893 F.2d 319, 13 USPQ2d 1320 (Fed. Cir. 1989).

In the present situation, the specification clearly defines the limitation "along the top edge," and it certainly is not synonymous to "parallel to the top edge." Particularly, the subject limitation is clearly defined

by illustration in Fig. 5 and textually in the last paragraph of page 9 and the first paragraph of page 10 of the specification, which discloses:

"In Fig. 5, there is shown a modified clothing trunk 50 of the third embodiment also having the pocket 20 sewn into a front panel 52 in the same manner as the clothing trunk 40 in Fig. 4. However, the clothing trunk 50 of Fig. 5 has the zipper 22 arranged along a top edge of a top panel 53 of the trunk." (Emphasis added)

The paragraph continues on to disclose the non-obvious advantages of this feature, particularly that the owner or possessor of the trunk 50 is able to completely fill the pocket with a chemical composition such as moth balls or crystals so that more time elapses before replenishing the pocket. The original drawing figures also support such a reading.

Since the first zipper 23 of the *Marks* compartment 21 is arranged along the middle and not the top edge of the compartment 21 as clearly illustrated in Figs. 1 and 2 in *Marks*, it clearly lacks the specific requirements of claim 1.

As previously argued in the previous response, the owner of a *Marks* bag cannot maximize the total volumetric capacity of the compartment 21, i.e., the compartment 21 cannot be completely filled. Instead, the owner must fill the compartment 21 only halfway since gravity will cause any excess moth balls to fall in the upper section of the compartment 21 above the first zipper 23. Consequently, less time elapses before the owner of the *Marks* bag needs to replenish the half-filled compartment 21 with fresh moth balls.

In view of the foregoing remarks, it is respectfully contended that the rejected claims are not anticipated by *Marks*. Reconsideration and withdrawal of the rejection of claims 1, 2, 6, 10-12, 19 & 21 is respectfully requested.

D. Braverman & Smallberg Lack the Spatial Location of the Means for Providing Access

The Office Action alternatively cites Braverman and Smallberg as purportedly teaching garment bags having access means at the top edge. However, both Braverman and Smallberg merely teach using a zipper to fasten/unfasten a compartment sized for storing clothes, shoes, etc., not mothballs, crystals and the like. *See, for example*, Smallberg, Col. 3, lines 21-23. The respective compartments taught in Braverman and Smallberg are not suited to hold mothballs, crystals and the like since the inner wall of each compartment is composed of a gas-impermeable material that does permit vapors from the mothballs, crystals and the like to escape. Hence, one of ordinary skill in the art would not look to these teachings as they teach away from the claimed invention. Moreover, the chemical composition of the mothballs, crystals and the like would likely contact the interior wall of the compartment, thereby damaging the wall and making it useless.

One would not use a compartment having a large volumetric capacity to fumigate a container as it would likely ruin the articles stored therein. This huge size differential between the claimed invention and the noted references are evidence that the respective teachings of said references are not applicable against the claimed invention, particular as evidence of anticipatory prior art.

Moreover, the compartments provided in both references are located so as to permit one to have access to the outside of the garment bag/container. *See, for example*, Braverman, Col. 2, lines 54 et seq. through Col. 3, lines 1-20.

In view of the foregoing, the present invention as currently defined in amended claim 1, is not anticipated by *Marks*. Reconsideration and withdrawal of the rejection of claims 1, 2, 6, 9-12, 19 and 21 is respectfully requested.

III.

35 U.S.C. 103 Rejections

Claims 13 & 21 are rejected under 35 U.S.C. 103(a) as unpatentable over *Marks* in view of U.S. Patent No. 2,591,277 to *Mintz* ("*Mintz* '277"), and claim 22 is rejected under 35 U.S.C. 103(a) as unpatentable over *Marks* in view of U.S. Patent No. 2,619,225 to *Mintz* ("*Mintz* '225").

Applicant respectfully contends that the claims are clearly patentably distinct over the proposed combinations of *Marks* and *Mintz* '277 and *Marks* and *Mintz* '225 for at least the following reasons.

As previously submitted in response to the 35 U.S.C. §102 rejection, *Marks* lacks a container that includes a self-containing pocket or one that includes an access means arranged along a top edge of the pocket.

Marks also lacks any teaching, suggestion, or motivation to combine or modify its teachings with those of *Mintz* '277 or *Mintz* '225 to produce the claimed invention, i.e., a garment container including, *inter alia*, (1) a self-containing pocket or (2) a means for providing access arranged along a top edge of the pocket.

Accordingly, since obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion or motivation to do so found in the references themselves or in the knowledge generally available to one of ordinary skill in the art, *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988), the proposed combination of *Marks* and *Mintz* is not capable of rendering the claimed invention obvious under 35 U.S.C. §103 since they each lack the same features of amended independent claim 1.

Notwithstanding the foregoing argument, the secondary references *Mintz* '277 or *Mintz* '225 do not make up for the missing features in *Marks* since they each fail to teach or disclose a self-containing pocket or a means for providing access arranged along a top edge of the pocket.

For instance, both *Mintz* '277 and *Mintz* '225 merely disclose garment bags having a multi-layered sheet material 22, 24 and 26 combining to form a pocket, and a fastener 40 arranged offset from the center of the pocket for providing access to the space 34 formed in the pocket. Col. 3, lines 60-64; Col. 4, lines 40-52; Figs. 1-3 of *Mintz* '277; Figs. 1-4 of *Mintz* '225.

Thus, the fasteners 40 provided in *Mintz* '277 and *Mintz* '225 are arranged in a totally different location than the means for providing access of amended claim 1. Moreover, the pockets of *Mintz* '277 and *Mintz* '225 are not a "self-contained" pocket since it is expressly disclosed on col. 4, lines 59-63 (*Mintz* '277 and col. 5, lines 63-65 (*Mintz* '225) that "the meeting edges of the various walls are sewn together along the edges of the bag as by the stitching 46," thereby inferring the formation of a pocket upon the multi-layered sheet material 22, 24, 26 being stitched together to the surface of the garment bag.

Therefore, the present invention as currently defined in amended claim 1, is not rendered obvious by the proposed combination of *Marks* and *Mintz*. Reconsideration and withdrawal of the rejection of claims 9, 13, 21 and 22 is respectfully requested.

IV. **Newly Added Claims 23 & 24**

The Applicant respectfully submits newly added claims 23 & 24, and contends that each claim is patentably distinct over the cited references inasmuch as they recite aspects of the invention not taught, disclosed or suggested by said references.

For instance, each claim requires a garment container comprising, *inter alia*, (1) a plurality of independently formed closeable pockets. This feature is supported at least at the bottom of page 4 of the specification and is advantageous for permitting the strategic placement of pockets adjacent certain interior compartments of the container to maximize the fumigation effect on the garments placed therein.

Claim 24 also requires "said back surface having a plurality of perforations for which pass through said back surface for permitting a sublimated fumigant to travel from said pockets into the items stored in said container, the size of said perforations being changeable to control the degree of permeability of said pockets."

CONCLUSION

In view of the foregoing remarks, Applicant respectfully contends that the pending claims are in condition for allowance and an indication of such allowability is kindly requested.

In the event that there are any questions relating to this Amendment or to the application in general, it would be appreciated if the Examiner would telephone the undersigned attorney concerning such questions so that prosecution of the instant application may be expeditiously closed.

The Commissioner of Patents and Trademarks is hereby authorized to charge any claim fee, any underpayments, additional fees and/or credit any overpayments to Deposit Account No. 18-2361.

Respectfully submitted,

BRENEMAN & GEORGES

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